

Ram Jatan Ram Vs. Chief Engineer (Vyasthapan Varg Iii) and ors.

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SooperKanoon Citation : sooperkanoon.com/476661

Court : Allahabad

Decided On : Apr-07-2004

Reported in : 2004(4)AWC3427; (2004)2UPLBEC2057

Judge : Vineet Saran, J.

Appeal No. : Civil Misc. Writ Petition No. 1590 of 1992

Appellant : Ram Jatan Ram

Respondent : Chief Engineer (Vyasthapan Varg Iii) and ors.

Advocate for Def. : B.P. Singh, Adv. and ;C.P. Gupta, S.C.

Advocate for Pet/Ap. : A.K. Shukla, Adv.

Disposition : Petition partly allowed

Judgement :

Vineet Saran, J.

1. The petitioner was initially appointed as a Fireman in the Public Works Department at Ballia on work charge basis. From 26.8.1966 to 28.2.1977 the petitioner worked as Fireman-cum-Cleaner. With effect from 1.3.1977 the petitioner claims that he was officiating as Roller Driver. However, his regular appointment was made in the year 1978 on the post of Roller Fireman. Since the

petitioner claims that he had actually been working on the post of Roller Driver from 1.3.1977, by means of this writ petition he has prayed for a direction to the respondent No. 4 to pay the difference of salary to the petitioner treating him to be working on the post of Roller Driver with effect from 1.3.1977 and continue to pay him on the said post of Roller Driver regularly month by month. A further prayer has been made for quashing the order dated 11.12.1991 whereby the Respondent Nos. 5 and 6, who are work charge employees, had been promoted as Roller Driver. However, since in the counter affidavit it has been stated that the said order dated 11.12.1991 had been withdrawn by the respondents themselves, as such the said prayer has already exhausted. By means of an amendment application a further prayer has been added in the writ petition for quashing the order dated 25.3.1988 whereby, although the petitioner was asked to officiate as Driver, restriction had been imposed for claiming the benefit of the post of Driver.

2. The only prayer which the learned Counsel for the petitioner has now pressed before me is for payment of difference of salary of the petitioner on the post of Roller Driver with effect from 1.3.1977 and also for payment of current and future salary on the post of Roller Driver.

3. I have heard Sri A.K. Shukla, learned Counsel for the petitioner as well as Sri C.P. Gupta, learned Standing Counsel appearing for Respondent Nos. 1 to 4 and have perused the record. Although Respondent Nos. 5 and 6 are also represented through Counsel, but none has appeared on their behalf at the time of hearing.

4. The appointment of the petitioner as Roller Fireman is not disputed. In the counter affidavit the respondents have not denied the fact that the petitioner was actually discharging the work of Roller Driver with effect from 1.3.1977. Further along with the counter affidavit an order dated 25.3.1988 has been filed as Annexure-CA-1 whereby on the application of the petitioner, he was directed to officiate as Driver on the condition that he would not claim seniority and other facilities/benefits of the post of Driver.

5. Admittedly the petitioner was given an officiating charge of Roller Driver with effect from 25.3.1988 and it has not been denied in the counter affidavit that the petitioner had actually been working atleast since then as Roller Driver. The

petitioner, thus, contends that if not since 1.3.1977, from which date the petitioner claims that he was given additional charge of Roller Driver, then at least from 25.3.1988 he would be entitled for being paid the salary of Driver and the condition that the petitioner would not claim seniority or benefit/facilities of the post of Driver was illegal and liable to be quashed. In support of his contention the learned Counsel for the petitioner has placed reliance on a decision of the Apex Court rendered in the case of Smt. P. Grover v. State of Haryana, 1984 UPLBEC 134. In the said case the appellant therein was Principal of a College and had been promoted as Acting District Education Officer with the condition that she would draw salary of the post of Principal. Considering the fact that the promotion of the petitioner had been made as Acting District Education Officer and she had worked on the said post, the Supreme Court directed that the appellant would be entitled to be paid salary of District Education Officer from the date on which she assumed charge as Acting District Education Officer and also held that such condition in the order of promotion that she will be paid salary of the post of Principal was not valid.

6. In the present case also, admittedly the petitioner had been given the officiating charge of Driver and had been working as such, atleast since 25.3.1988, on which date the impugned order had been passed with a condition that he would not claim seniority and other benefits/facilities of such post. Such a condition could not mean to say that the petitioner would be deprived of his salary of the post of Driver on which post he had admittedly been working atleast since 25.3.1988. As such it is directed that the petitioner shall be paid the difference of his salary on the post of Roller Driver with effect from 25.3.1988 and the respondents shall continue to pay the salary on the post of Driver in future also, if the petitioner continues to work on the post of Driver.

7. In the result this writ petition is partly allowed. No order as to cost.